

TO: Members, Clark Fork Basin Water Management Task Force

FROM: Matthew McKinney, Executive Director
Gerald Mueller, Project Coordinator
Mark Lambert, Project Associate

SUBJECT: Summary of September 30, 2002 Meeting and Next Steps

DATE: November 22, 2005

Participants

All members of the Task Force and staff were present, except the following:

Jay Stucky, representing Clark Fork River Watershed below Flathead River confluence
Mike Miller (alternate), Clark Fork below Flathead
Tina Bernd-Cohen (alternate), Blackfoot River Watershed

Tracey Turek was welcomed as a new Task Force Member. She will be representing the City of Missoula. Tracey is a former member of the Missoula City Council and worked for DNRC dealing with water rights issues. She is now a private water rights consultant.

Discussion of Issue Briefs

A detailed issue brief is being developed focusing on what has been learned and what remains to be learned regarding the primary topic of each Task Force meeting. These issue briefs will eventually contribute to an Annual Report to be submitted to the State Legislature and the management plan. They will also be helpful in the ongoing development of the Task Force's work as a public statement of progress and as a useful reference.

The issue brief for the August meeting on basin hydrology and the physical availability of water is currently being drafted. An outline has been provided to the Task Force members.

Presentations

The Task Force heard five presentations focused on Montana water rights and appropriation, as described below. Water rights in Montana are covered extensively in the DNRC publication "Water Rights in Montana," available online at:

<http://www.dnrc.state.mt.us/wrd/WTR-1.pdf>

1. Don MacIntyre, DNRC Chief Legal Council, discussed Montana water law. He covered the following topics:
 - A. Who can appropriate?
 - B. Elements and Limits of a Water Right
 - C. Actual appropriations limit of the right
 1. Measure of the Right
 2. Limits of a Water Right
 3. Duty of Water
 - D. Beneficial Use
 - E. Priority _ First in Time
 - F. Waste of Water
 - G. Introduction to the Montana Water Use Act
 1. Recognition and Protection of Existing Rights
 2. Single and exclusive method of appropriating water
 3. Administrative processes for "changes"
 4. Statewide centralized record and administrative system
2. Sue Cottingham, Program Manager of the Montana Reserved Water Rights Compact Commission discussed Montana's approach to federal reserved water rights. She covered the following topics:
 - A. Definition of a Federal Reserved water right
 - B. History nature of Federal Reserved water rights, including who has them in Montana
 - C. Montana's approach to negotiated quantification of Federal Reserved water rights and how that may deviate from court quantification
 - D. Report on existing compacts and status of the USFS and Salish and Kootenia negotiations
3. John Clayton, Salish and Kootenai Tribal Attorney, discussed the history, origin, and scope of Tribal aboriginal and reserved water rights.
4. Clayton Matt, Tribal Water Rights Division Administrator and Spokesperson, discussed the relationships between aboriginal and reserved water rights and watershed planning.
5. Mike McLane, Watershed Planner- DNRC Water Management Bureau, discussed the water appropriation system. He covered the following:
 - A. Getting New Water Rights
 1. When is a permit needed?
 2. Exemptions to the Permitting Process
 - a) Ground water less than 35 gpm & less than 10 acre feet
 - b) Stockwater pits and reserviors
 3. Process Outline
 4. Statutory Criteria in a nutshell
 - a) normal burden of proof
 - b) burden of proof for large applications
 - B. Changes in Water Right Appropriations
 1. Purpose of the Administrative Process

2. Protect and Minimize Third Party affects
 3. When is a Change Needed?
 4. Modification of features requiring Administrative Approval
- C. Specialized Changes:
1. Water leasing for instream flow
 2. Temporary Changes
 3. Change of Road Construction – special provisions
 4. Large project changes (5.5 cfs and greater than 4,000 acre feet)
- D. Water Reservations
1. Water for future use
 2. Water for instream flow
 3. Limited to public entities

Concluding Discussion: What do we need to know?

Task Force members made the following observations regarding information they would like to have to proceed with the Water Management Plan:

- 👉 Estimation of how much water is actually being used in the basin

Next Steps

The next two meetings will focus on the following topics:

October 28 – Regulatory Controls and their implication to water availability and the security of water rights. Judge Bruce Loble, Chief Water Judge of the Montana Water Court, will address the Task Force at the October meeting. He will speak about the adjudication process in Montana. Mike Roberts of DNRC will discuss the role of water commissioners.

November 25 -- How much water is used? By whom? For what?

Each one of these meetings will, in general, be organized around the following questions: What do we know? What don't we know? What do we want to know? How should we go about learning what we want to know?

The following documents are enclosed with this memorandum:

1. Revised Task Force participant list
2. October 28 Meeting Agenda